

**Before the
Federal Communications Commission
Washington, D.C. 20554**

JUN 28 2005

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Burlington and Cary, North Carolina)

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MB Docket No. 04-429.
RM-11120

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 22, 2005

Released: June 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking*¹ proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Capstar TX Limited Partnership ("Capstar"), licensee of Station WRSN-FM, Channel 230C, Burlington, North Carolina, the *Notice* proposes to change the community of license for Station WRSN-FM from Burlington to Cary, North Carolina. Capstar's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. Capstar represents that if its request is granted, it will file an application to modify the facilities of Station WRSN-FM to specify operation on Channel 230C at Cary, North Carolina. Capstar filed comments supporting the changes proposed in the *Notice*.

2. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² Retention of Channel 230C at Burlington would satisfy only the fourth allotment priority, "other public interest matters," whereas the proposed reallocation of Channel 230C at Cary would satisfy the third allotment priority, "first local service."³

3. We recognize that Cary is located within the Raleigh, North Carolina Urbanized Area. In such circumstances, we do not blindly apply a first local service preference. Instead, we determine whether to apply a first local service preference after evaluating the independence of the proposed community from the central city of the urbanized area.⁴ Applying the *Tuck* criteria, Cary is sufficiently independent of Raleigh,

¹ *Burlington and Cary, North Carolina*, 19 FCC Rcd 15,378 (MB 2004) ("Notice").

² 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

³ Burlington will continue to be served by two local stations, WSMT(AM) and WTZX(AM).

⁴ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*"), and *Huntington Broadcasting Co. v. FCC*, 192

the central city in the Raleigh, North Carolina Urbanized Area, to qualify for a first local service preference, for the reasons discussed below.

4. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) most importantly,⁵ the interdependence of the suburban community with the metropolis.

5. The 70 dBu contour of Station WRSN-FM currently encompasses 100 percent of the Raleigh Urbanized Area, and it will continue to do so following the proposed change of community. Although the proposed change of community will result in a move into an urbanized area, the signal coverage of that urbanized area will not increase as a result of the change. Under the circumstances, we do not view a first local service preference for Cary as a pretext to enter an urban market. Comparison of the size and proximity of Cary and Raleigh is consistent with a finding that the proposed allotment at Cary is entitled to preference as a first local service. Cary's population is 34 percent that of Raleigh, and Cary is located 12.7 kilometers from Raleigh. In numerous proceedings, where the size disparity between the two communities was greater and the distance between them shorter, we nonetheless have found that the proposed new community satisfied the requirements of *Tuck*.⁵

6. Turning to the crucial third *Tuck* factor, we find ample evidence that Cary is independent of Raleigh and therefore should be afforded a first local service preference. Petitioner presents convincing evidence that Cary has a unique identity and history, separate from those of Raleigh. Cary has an independent government, led by a mayor and six council members, who are each elected to four-year terms. Cary has numerous administrative offices and departments, and the government of Cary provides municipal services to residents, including police and fire protection, garbage collection, water and sewer services, planning, and inspections.

7. The population of Cary has grown significantly in the past thirty years, tripling in the 1970s and doubling in the 1980s and 1990s. Cary's Planning Department estimates that Cary's population was 107,221 as of October 1, 2003, and will be 176,384 by July 1, 2020. Cary spans two zip codes, 27511 and 27519, and has its own separate listings in the local telephone company directory.

8. Cary is home to a variety of businesses and commercial establishments, including numerous local businesses that incorporate the word "Cary" in their names. Numerous health care and medical service providers are located in Cary, and Cary is home to several churches. A significant percentage of Cary residents telecommute or work at home. Of the 51,175 employed individuals residing in Cary, 16,242 persons work at their place of residence, comparing favorably with other independent communities.

9. Finally, Cary has its own local media. *The Cary News* is a weekly publication with a circulation

F.2d 33 (D.C.Cir. 1951) ("*Huntington*").

⁵ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (Newcastle had population equal to 0.9 percent of Oklahoma City), and cases cited therein.

of 15,000 that covers local news and contains other articles of local interest. Local businesses advertise in *The Cary News*, which enables them to reach the residents of Cary without relying on Raleigh media sources.

10. For all of the foregoing reasons, we conclude that the public interest would be served by and reallocating Channel 230C at Cary, North Carolina. Channel 230C can be allotted at Cary in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 35.4 kilometers (22.0 miles) west of Cary at reference coordinates of: 35-52-15 NL and 79-09-40 WL.⁶

11. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(A).

12. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective August 8, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Burlington, North Carolina	266C
Cary, North Carolina	230C

13. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Capstar TX Limited Partnership, for Station WRSN-FM, Channel 230C, Burlington, North Carolina, IS MODIFIED to specify operation on Channel 230C at Cary, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. Capstar TX Limited Partnership, licensee of Station WRSN-FM, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

15. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

⁶ No change to the physical facilities of Station WRSN-FM will be necessary.

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16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau,
(202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau